#10 6/18/99 T. Gray

CERTIFICATE OF MAILING
37 C.F.R 1.8

I hereby certify that this correspondence is being deposited with the U.S. Postal Service with sufficient postage as First Class Mail in an envelope addressed to: Assistant Commissioner for Patents, Washington, DC 20231, on the date below:

6/10/99
Date

GK Yound
Signature

PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of:
Höök, et al.

Serial No.: 09/010,317

Filed: January 21, 1998

For: Fibronectin Binding Protein Compositions and Methods of Use

Group Art Unit: 1645

Examiner: Weatherspoon

Atty. Dkt. No.: TAMK:189

RESPONSE TO RESTRICTION REQUIREMENT DATED APRIL 30, 1999

Assistant Commissioner for Patents
Washington, D.C. 20231

Sir:

This paper is submitted in response to the Restriction Requirement dated April 30, 1999 for which the date for response was May 30, 1999.

A request for a one month extension of time to respond is included herewith along with the required fee. This one month extension will bring the due date to June 30, 1999, which is within the six-month statutory period. Should such request or fee be deficient or absent, consider this paragraph such a request and authorization to withdraw the appropriate fee under 37 C.F.R. §§ 1.16 to 1.21 from Arnold White & Durkee Deposit Account No. 01-2508/TAMK:189/STS.

Applicants hereby traverse the restriction requirement with regard to Groups I, II and VI as set forth in the Official Action dated April 30, 1999 for the reasons as set forth below. Without prejudice to the following arguments, Applicants provisionally elect group VI, Claims 33-37.

As set forth in M.P.E.P. § 803, for a restriction requirement to be proper, the Examiner must show that the inventions are independent or distinct from each other and that there must be a serious burden on the Examiner if restriction is not required. In the Official Action dated April 30, 1999, the Examiner, in making the restriction requirement between Groups I and II, argued that these groups were "clearly distinct". In addition, in restricting between groups I and VI, the Examiner argued that these were related as process of making and product made, but that the antibody of Group I could be made by a "materially different process". However, the Examiner's asserted grounds for restricting the application do not support the basis for restriction in this case, and these restrictions are respectfully traversed for the reasons that follow.

In the first place, contrary to the Examiner's assertion that Groups I and II are "clearly distinct", the claims of Groups I and II are related in that the peptide of Group II is used to generate the antibody of Group I. Since these Groups are related as peptides and the antibodies generated thereto, they do not reflect distinct inventions and thus should be examined together in the present application. The fact that claims directed to peptides are not distinct from claims directed to antibodies to those peptides is made evident by numerous issued U.S. patents which include claims to both. See, e.g., U.S. Pat. No. 5,846,732 (claims to an antigenic peptide and to anti-caseinomacropeptide antibodies); U.S. Pat. No. 5,861,262 (claims to oligopeptides and antibodies recognizing glutathione peroxidase); and U.S. Pat. No. 5,459,235 (claims to (-defensin

peptide and to antibodies that specifically bind to (-defensin). Accordingly, the Examiner's restriction between Groups I and II is respectfully traversed and should be withdrawn.

Further, Groups I and VI are related as antibodies (Group I) and a method of generating these antibodies from an isolated peptide of a fibronectin binding domain (Group VI) and should be examined together in the present application on that basis. The fact that antibodies and the methods used to generate those antibodies should be examined together in the same application is made evident in the numerous patents which have claims directed to both. See, e.g., U.S. Pat. No. 5,786,180 (monoclonal antibody specific for beta-A4 peptide and method of generating antibody); U.S. Pat. No. 5,622,701 (monoclonal antibody specific for P- and E-selectin and method of generating antibody); and U.S. Pat. No. 5,866,688 (method of producing antibody against cytochrome P450 and antibody produced thereby). Moreover, since it would be extremely difficult, if not impossible, to produce an antibody that would be identical to the antibody of the present invention by other means, such as through recombinant techniques, the Examiner's assertion that the specific antibodies of the invention can be produced by a materially different process is not valid. Accordingly, Groups I and VI should not properly be subject to restriction, but should be examined together in the present application.

In summary, Applicants submit that the claims in Groups I, II and VI do not reflect distinct inventions, but to the contrary are related and should be examined together in one application. Applicants thus submit that the Restriction Requirement of the Examiner is improper with regard to these groups and should be withdrawn.

The Examiner is invited to contact the undersigned attorneyat 713.787.1596 with any questions, comments or suggestions relating to the referenced patent application.

Respectfully submitted,

Patricia A. Kammerer, Esq.
Reg. No. 29,775

ARNOLD WHITE & DURKEE
P.O. Box 4433
Houston, Texas 77210-4433
(713) 787-1400

Date: June 10, 1999